

United States
Circuit Court of Appeals
For the Ninth Circuit.

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation,

Plaintiff in Error,

vs.

MUNICIPALITY OF SEWARD, ALASKA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Third Division.

Filed

APR 9 - 1915

F. D. Monckton,

Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled here . accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,
Third Division.*

Names and Addresses of Attorneys of Record.

Mr. J. LINDLEY GREEN, Seward Alaska,
Attorney for Plaintiff and Defendant in Error.

Mr. S. O. MORFORD, Seward, Alaska,
Attorney for Defendant and Plaintiff in Error.

[2*]

*In the District Court for the Third Judicial Division,
Territory of Alaska.*

S—38.

IN THE MATTER OF THE DELINQUENT REAL
ESTATE TAXES OF THE TOWN OF
SEWARD, ALASKA, FOR 1913.

Petition for Adjustment and Order of Sale.

To the Honorable Judge of the Above-entitled Court:

Comes now your petitioner, Frank J. Cotter, and respectfully represents and shows:

That he is the duly elected and acting Town Clerk of the incorporated Town of Seward in the Third Judicial Division of the Territory of Alaska; that in accordance with Ordinance No. 14 of the said Town of Seward, Alaska (copy of said Ordinance herewith), the attached list of DELINQUENT REAL ESTATE TAXES OF THE TOWN OF SEWARD, ALASKA, 1913, covering thirteen pages, was prepared in duplicate by the Assessor of the town of Seward, Alaska, November 28, 1913, certified to by

*Page-number appearing at foot of page of original certified Record.

said Town Clerk, and said list together with notice was published in the "Seward Daily Gateway," a newspaper of general circulation, for a period of more than thirty days, per proof of publication herewith attached; that the cost of publishing said delinquent tax-roll and notice amounted to \$367.50, being at the rate of 50 cents per line; that the said delinquent tax-rolls have been corrected to date, the original delinquent tax-roll being now in the possession of said Town Clerk; that the delinquent tax-roll herewith is a true, accurate and correct list and schedule of the real property at present time in the Town of Seward, Alaska, on which taxes for the year 1913 have not been paid and are delinquent.

WHEREFORE, your petitioner prays that an order of adjustment be made by your Honorable Court covering the costs entailed in advertising said property herein listed, together with court costs; and also that an Order of Sale be issued by your Honorable Court of all the real property herein listed on which taxes have not been paid and are delinquent, in order that the provisions of said Ordinance No. 14 may be carried out and complied with at as early a date as possible.

Dated Seward, Alaska, February 3d, 1914.

FRANK J. COTTER,

Town Clerk, Town of Seward, Alaska. [3]

United States of America,
Territory of Alaska,—ss.

Frank J. Cotter, being first duly sworn, deposes and says: That he is the petitioner in the above and foregoing petition; that he has read said petition,

knows the contents thereof, and that the same is true as he verily believes.

FRANK J. COTTER.

Subscribed and sworn to before me this 3d day of February, 1914.

[Seal]

M. J. CONROY,

Notary Public for the Territory of Alaska, Residing at Seward, Alaska.

My commission expires March 13, 1916.

[Endorsed]: "Filed in the District Court, Territory of Alaska, Third Division. Feb. 20, 1914. Arthur Lang, Clerk. By Chas. A. Hand, Deputy."

[4]

S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Protest.

To the Mayor and Common Council of the Town of
Seward, Alaska:

You will please take notice that the Alaska Northern Railway Company, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the Territory of Alaska, and having property therein, will appear by

its attorney on the 18th day of February, 1914, or as soon thereafter as counsel can be heard, and object to any order of the Court approving the tax levy for the years 1912 and 1913, made by the municipality of Seward upon the following described property:

1. Lots 16, 17, 18, 19 and 20 in Block 16 of the Townsite of Seward.

2. All of the land lying and being south of the north line of Railway avenue and the south line of U. S. survey No. 726 south, according to the U. S. patent to Frank L. Ballaine and the map and plat of the Town of Seward, Territory of Alaska. Area seven acres.

3. One and forty one-hundredths acres which lies between the line of mean high tide on Resurrection bay and the east line of the right of way of the Alaska Central Railway and in front of U. S. Survey No. 726 S. and 726 N., F. L. Ballaine soldier's additional homestead location. 1 40-100 acres.

4. Twenty-eight one-hundredths acres, described as next above.

5. The land occupied and claimed exclusively as right of way for railroads by railroad companies and corporations, together with the buildings and all the substructures and superstructures supporting the same, situate within the Town of Seward, Alaska, —two miles.

6. The wharf known as Seward Dock within the Town of Seward, including the superstructures and piles driven into the ground for the purpose of supporting the same, for the following reasons, to wit:

1. That the Municipality of Seward had no power or authority to levy any tax or taxes upon railroad property of the Alaska Northern Railway Company; [5]

2. That the property attempted to be assessed is not sufficiently described to identify the same;

3. That the Act of the territorial legislature, entitled An Act relating to the assessment, levy and collection of general taxes for school and municipal purposes by municipal corporations, and declaring an emergency, is void;

4. That this Court has no jurisdiction to hear and determine the matter;

5. That the Alaska Northern Railway Company is exempt from municipal taxes for a period of five years by virtue of the act of Congress approved August 24th, 1912, entitled An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon, and for Other Purposes:

6. That the Alaska Northern Railway Company is further exempt from taxation by virtue of the special act of Congress, entitled "An Act to extend the time for the completion of the Alaska Central Railway, and for other purposes, approved June 30, 1906.

This defense will be made upon this notice and the delinquent tax-roll returned by the Municipality of Seward, and the affidavit of S. O. Morford, a copy of

which is hereto attached.

ALASKA NORTHERN RAILWAY COM-
PANY, a Corporation.

By S. O. MORFORD,
Attorney and Agent.

[Endorsed]: "Filed in the District Court, Territory of Alaska, Third Division. Feb. 20, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy."

[6]

S—38.

United States of America,
Territory of Alaska,—ss.

Affidavit of S. O. Morford.

S. O. Morford, being first duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and a resident of Seward, territory of Alaska; that he is the attorney for, and the duly authorized agent of the Alaska Northern Railway Company upon whom service may be made in the territory of Alaska; that he has examined the delinquent tax-roll of the town of Seward, and knows the property therein described and assessed to the Alaska Northern Railway Company.

That the lands described as Lots 16, 17, 18, 19 and 20 in Block 16 of the Town of Seward, is the property of the Alaska Northern Railway Company, and occupied and used by it exclusively for an office building for the transaction of its business in the territory of Alaska, and for no other purpose.

That the tract of land described as one and forty one-hundredths acres which lies between the line of mean high tide on Resurrection bay and the east line of the right of way of the Alaska Central Railway and in front of U. S. survey No. 726 S. and 726 N., F. L. Ballaine soldier's additional homestead location, and also the land described as twenty-eight one-hundredths acres, described as next above, were granted to the Alaska Central Railway Company for terminal purposes, building approaches, docks, warehouses, et cetera, by special act of Congress approved June 30, 1906, entitled "An Act to extend the time for the completion of the Alaska Central Railway, and for other purposes"; that the Alaska Northern Railway Company is the successor to the Alaska Central Railway Company; that said tracts of land are an additional grant of right of way, and no patent has been issued therefor.

That the tract of land described as "The land occupied and claimed exclusively as right of way for railroads by railroad companies and corporations," is the right of way of the Alaska Northern Railway Company upon which its tracks, roundhouses and shops are located, [7] and the same is held by the Alaska Northern Railway Company as its right of way under the general act of Congress providing for the location and building of railroads in Alaska.

That the tract of land described as the wharf known as the Seward Dock within the Town of Seward including the superstructure and piles driven into the ground for the purpose of supporting the same, is part of the right of way, and is the initial

point of construction, and is held and used by the Alaska Northern Railway Company for railroad purposes.

That the tract of land described as land lying and being south of the north line of Railway avenue and the south line of U. S. survey No. 726 south, etc., is an impossible description. The lands referred to and owned by the Alaska Northern Railway Company lie between Railway avenue and north of the south line of U. S. survey No. 726 south, and between the east line of First avenue and the east line of U. S. survey No. 726 south, Frank L. Ballaine homestead, the same being lands held and claimed by the Alaska Northern Railway Company for the use of said company, for its tracks, warehouses, wharfs and approaches, and all of said property is necessary property for the proper conducting and operating of a railway from Seward to the head of Turnagain Arm in said territory.

That the Alaska Northern Railway Company has seventy-one miles of railroad constructed and operated, and the lands so included by the tax levy as shown by the delinquent tax-roll of the Town of Seward and assessed to the Alaska Northern Railway Company, are lands used exclusively for tracks, wharfs and approaches for conducting railway business from Seward to the interior of Alaska.

S. O. MORFORD.

Subscribed and sworn to before me this 20th day of February, A. D. 1914.

L. V. RAY,
Notary Public in and for the Territory of Alaska,
Residing at Seward.

My commission expires April 24, 1914.

Service accepted Feb. 20, 1914.

L. V. RAY,
City Attorney for Seward, Alaska.

[Endorsed]: "Filed' in the District Court, Territory of Alaska, Third Division. Feb. 20, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy."
[8]

S—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

vs.

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Stipulation of Facts.

To Hon. FRED M. BROWN, Judge of the District
Court for the Third Judicial Division, Territory
of Alaska.

In the above-entitled matter it is hereby stipulated by the Town of Seward, a municipal corporation, by its attorney, J. Lindley Green, Esq., and the Alaska Northern Railway Company, a corporation, protestant against the order of sale prayed for, represented by S. O. Morford, Esq., that an agreed statement of facts, as hereinafter set forth, shall be presented to the above-entitled court for an opinion of the law governing and controlling the controversy

set forth, and the judgment of the Court thereon requested; each and all the parties hereto reserving a right to prosecute a Writ of Error therefrom to the appellate court.

1. The Town of Seward is a municipal corporation, duly incorporated under the laws of Alaska applicable thereto, and is situated within the Third Judicial Division of the Territory of Alaska, within the jurisdiction of the above-entitled court.

2. The protestant, the Alaska Northern Railway Company, is a corporation duly organized and authorized to acquire, construct, maintain and operate railroads and wharves, in the territory of Alaska, and do a general transportation business.

3. The Alaska Northern Railway Company, the protestant, is the owner of all the property set forth in the delinquent tax list herein and assessed to the Alaska Northern Railroad Company.

4. That all of said property is railroad property and used for railroad purposes.

5. That the property in said list designated as Lots 16, 17, 18, 19 and 20 in block 16 of the Town of Seward are the lots upon which the railway office building is constructed, which building is [9] now used and has been used since its construction as the general headquarters and office building of the railway company for the transaction of the company's business, and is situate about 1,000 feet from the freight-sheds and railway track of the Alaska Northern Railway Co.

6. That the wharf is the terminal of the Alaska Northern railway, and its buildings were constructed

for, and are used as a freight and passenger station for the said railway company, and also for the use of the general public for passengers and freight entering Seward from foreign ports, and that wharfage charges have always been made and collected upon such freight.

7. That the Alaska Central Railway Company was organized and duly authorized to construct and operate railroads and wharves and do a general transportation business in the territory of Alaska.

8. That the Alaska Northern Railway Company, protestant herein, is the successor of the Alaska Central Railway Company.

9. That in the year 1909, by decree of the District Court for the territory of Alaska, Third Division, a judicial sale was had upon mortgage foreclosure of the property of the Alaska Central Railway Company, including that described in said tax-roll.

10. That in the year 1910, the Alaska Northern Railway Company was organized as successor to the Alaska Central Railway Company and acquired all its rights, property, franchises and privileges, and ever since 1910, when organized, has been and now is the owner and holder thereof.

11. That the Alaska Central Railway Company and its successor, the Alaska Northern Railway Company, have constructed and operated a railroad from Seward, Alaska, to Kern Creek, Alaska, a distance of seventy-one (71) miles.

12. That protestant, Alaska Northern Railway Company, claims the tax assessed, as described in

said delinquent tax-roll for the year 1913, of real property within the town of Seward, Alaska, an illegal and void assessment by reason of certain exemptions hereinafter set forth. [10]

13. It is agreed that in accordance with the ordinances of the Town of Seward, based upon and adapted from chapter 69 of the Session Laws of the territory of Alaska for the year 1913, entitled "An Act relating to the assessment, levy and collection of general taxes for school and municipal purposes by municipal corporations, and declaring *and* emergency," which law went into force and effect April 30, 1913, the delinquent tax-roll now under consideration was and is duly presented with its prayer for order of sale against the delinquent named.

14. That, for the purpose of this case, the assessment and levy of taxes upon real property situate within the incorporated limits of said Town of Seward for the year 1913, except as herein specifically set forth, was and is a valid and legal assessment and levy.

15. The protestant railway company claims its property to be exempt from taxation by reason of certain congressional enactments hereinbelow set forth and enumerated:

(a) By Act of June 6, 1900, 31 Statutes at Large 331, Compiled Laws of Alaska, sec. 2569, all railroads in Alaska are required to pay a tax of \$100.00 per mile for each mile operated:

(b) An Act of Congress approved April 28, 1904, sec. 630 and sec. 631, Compiled Laws of Alaska, provides that all licenses collected within the limits of

the municipality shall be paid to the municipality for school and municipal purposes:

(c) Act of June 30, 1906, 34 Stat. L., 798, Compiled Laws of Alaska, clause Fifth.

“Fifth, Said company” (Alaska Central Railway Company) “shall be exempt from license tax and tax on its railway and railway property during the period of construction and for five years thereafter: *Provided*, That the total period of exemption shall not exceed ten years from the time of the passage of this act.”

(d) The Act of Mar. 2, 1909, 35 Stat. L., 683, Compiled Laws of Alaska, sec. 77, gives to the Alaska Central Railway Company a further period of three years in addition to that given in the Act described in clause (c).

(e) That portion of the Act creating a legislative body in Alaska, as set forth in section 416 of the Compiled Laws of Alaska, [11] reading: * * * “No tax shall be levied for territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year; nor shall any incorporated town or municipality levy any tax, for any purpose, in excess of two per centum of the assessed valuation of property within the town in any one year: *Provided*, That the Congress reserves the exclusive power for five years from the date of the approval of this act to fix and impose any tax or taxes upon railways or railway property in

Alaska." * * * The Act being approved Aug. 24, 1912.

TOWN OF SEWARD, a Municipal Corporation.

By J. LINDLEY GREEN,
Attorney for Town of Seward.

ALASKA NORTHERN RAILWAY COMPANY, a Corporation.

By S. O. MORFORD,
Attorney for Protestant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 3, 1914. Arthur Lang, Clerk. By K. L. Monahan, Deputy. [12]

*In the District Court for the Territory of Alaska,
Third Division.*

S/38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

vs.

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Opinion.

This is an application for adjustment and order of sale of real property for delinquent taxes, made by the Town of Seward, pursuant to the provisions of chapter 69 of the Territorial Laws of Alaska for the year 1913.

The Alaska Northern Railway Company, a corporation, has filed written objections to the making of an order by this Court approving the tax levy for the years 1912 and 1913, upon property owned by it within the corporate limits of the Municipality of Seward, assigning the following grounds of objection:

1. That the Municipality of Seward had no power or authority to levy any tax or taxes upon railroad property of the Alaska Northern Railway Company.
2. That the property attempted to be assessed is not sufficiently described to identify the same.
3. That the Act of the territorial legislature, entitled an Act relating to the assessment, levy and collection of general taxes for school and municipal purposes by municipal corporations, and declaring an emergency, is void.
4. That this Court has no jurisdiction to hear and determine the matter.
5. That the Alaska Northern Railway Company is exempt from municipal taxes for a period of five years by virtue of the Act of Congress approved August 24, 1912, entitled An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power thereon, and for Other Purposes.
6. That the Alaska Northern Railway Company is further exempt from taxation by virtue of the special act of Congress, entitled "An Act to extend the time for the completion of the Alaska Central Railway, and for other purposes, approved June 30, 1906. [13]

The only grounds urged by counsel for said Railway Company are the fifth and sixth, to wit:

a. That said Alaska Northern Railway Company is exempt from municipal taxes for the period of five years by virtue of the Act of Congress approved August 24, 1912, which was the Act creating a legislative assembly for the territory of Alaska. This Act, known as the Organic Act, contains the following provision, in Section 416, Compiled Laws of Alaska:

“Provided that the Congress reserves the exclusive power for five years from the date of the approval of this Act to fix and impose any tax or taxes upon railways or railway property in Alaska.”

The evident purpose and intent of this provision was to restrict or prohibit the territorial legislature of Alaska created by said Act from imposing any tax upon railways in Alaska for five years from August 24, 1912.

By the Act of Congress approved April 28, 1904, providing for the incorporation of towns in Alaska, the following powers were given to the Common Council of the towns or municipalities, section 9 (sec. 627, Comp. Laws of Alaska):

“The said common council shall have and exercise the following powers:

To assess, levy and collect a general tax for school and municipal purposes, not to exceed two per centum of the assessed valuation upon all real and personal property and to declare the

same a lien upon said property and to enforce the collection of such lien by foreclosure, levy, distress and sale.”

This Act has never been repealed. Chapter 69 of the territorial laws of Alaska does not undertake to authorize or empower the levy or collection of any further or additional tax than that theretofore authorized by Congress, but merely provides for the manner of the enforcement and collection of the same.

Section 2569, Comp. Laws of Alaska, as amended June 6, 1900, provides for the payment of a license fee for carrying on certain lines of business and trade, and among other things, provides for the payment by railroads of \$100 per annum on each mile operated. There is no more reason for believing that the Act relating to taxation [14] by municipalities, approved August 28, 1904, is repealed by implication by the said Organic Act approved August 24, 1912, than that the general act amended June 6, 1900, regarding the payment of \$100 per mile of railroad operated as a license fee, should be so repealed by implication. By said Organic Act the Congress merely provides that it retains exclusive power for five years from August 24, 1912, to impose taxes upon railway property in Alaska. The tax here complained of is imposed or authorized by Congress and it would be contrary to every rule of statutory construction to read into this Organic Act something that is not contained therein, to wit, that Congress suspends the power of taxation theretofore granted to the municipality or suspends the license fee thereto-

fore imposed by Congress.

It seems to me clear that the purpose and intent of said provision of the Organic Act was merely to prohibit the territorial legislature from imposing a further or additional tax on railroads during said period of five years.

In the *City of Rochester v. Rochester Ry. Co.*, 82 N. Y. 99, 70 L. R. A. 779, it is said—quoting *Yazoo & M. Valley R. Co. v. Adams*, 180 U. S. 1:

“Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appears to have been the intent of the legislature. Public policy in all the States has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational and municipal purposes; but this list ought not to be extended, except for very substantial reasons; and while, as we have held in many cases, legislatures may, in the interest of the public, contract for the exemption of other property, such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too much to say that courts are astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies.” “See *New Orleans City & Lake R. Co. v. New Orleans*, 143 U. S. 192, 36 L. ed. 121, 12 Sup. Ct. Rep. 406, and *Memphis Gaslight Co. v. Taxing District*, 109 U. S. 398, 27 L. ed. 976, 3 Sup. Ct. Rep. 205.”

(b) The said Alaska Northern Railway Company by its sixth ground of objection claims to be exempt from said taxation by virtue of a special Act of Congress entitled "An Act to extend the time for the completion of the Alaska Central Railway and for other purposes" approved June 30, 1906. This act provides: [15]

"Section 5. Said company shall be exempt from license tax and tax on its railway and railway property during the period of construction and for five years thereafter; provided that the total period of exemption shall not exceed ten years from the time of the passage of this Act."

This special Act of Congress, however, was an act of privilege or exemption, personal to the Alaska Central Railway Company, not to its successors or assigns, which under the settled law, as determined by the Supreme Court of the United States, would not pass to this protestant, the Alaska Northern Railway Company.

In *Norfolk & W. R. Co. v. Pendleton*, 156 U. S. 667, it is said:

"We have frequently held that, in the absence of express statutory direction, or of an equivalent implication by necessary construction, provisions, in restriction of the right of the State to tax the property or to regulate the affairs of its corporations, do not pass to new corporations succeeding, by consolidation or by purchase under foreclosure, to the property and ordinary franchises of the first grantee; that a mortgage of the franchises and property of a

corporation, made in the exercise of a power given by the statute, confers no right upon purchasers at a foreclosure sale to exist as the same corporation, but to reorganize a new corporation, subject to the laws existing at the time of the reorganization. This we have stated to be a salutary rule of interpretation, founded upon obvious public policy, which regards such exemptions as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirements of the grant construed *strictissimi juris*.

Morgan v. Louisiana, 93 U. S. 217.

Wilson v. Gaines, 103 U. S. 417.

Chesapeake & O. R. Co. v. Miller, 114 U. S. 176."

I am therefore of the opinion that the Alaska Northern Railway Company is lawfully subject to this tax and the objections of said Railway Company will be overruled and the order of sale made as prayed for.

Dated at Seward, Alaska, this 5th day of October, 1914.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 5, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [16]

*In the District Court for the Territory of Alaska,
Third Division.*

Case No. S8—38.

Findings of Facts and Conclusion of Law.

**IN THE MATTER OF THE DELINQUENT
REAL ESTATE TAXES OF THE TOWN
OF SEWARD, ALASKA, FOR 1913.**

This case coming on to be heard and the Alaska Northern Railway, a corporation, having filed its protest, protesting against the Court making an order for the sale of real estate belonging to said railway company for delinquent taxes which have been assessed against said railway company by said Town of Seward for the year 1913, and the petitioner, the Town of Seward, having appeared by its attorney, L. V. Ray and J. *Lidnley* Green, and the protestant, Alaska Northern Railway Company, having appeared by its attorney, S. O. Morford, and the Court having heard all the evidence and argument by council, and being fully advised in the premises, finds the following facts:

1.

That the Town of Seward is a municipal corporation situated in the Third Division of the Territory of Alaska and is duly incorporated under the laws of Alaska applicable thereto, and has full power and authority to assess, levy and collect taxes upon the property situated within the corporate limits of the town.

2.

That the property belonging to the Alaska North-

ern Railway Company situated within the corporate limits of the Town of Seward is subject to taxation by said municipality. That the assessed valuation of the property belonging to the said Alaska Northern Railway Company was equally assessed by said municipality according to its valuation as required by law and in proportion to the assessed valuation of other property situated within the corporate limits of said municipality.

3.

That the assessment was legally made all the proceedings regular and according to law.

4.

That the said Alaska Northern Railway Company has not [17] paid the taxes for the year 1913, assessed against the following described real estate belonging to it, situated within the corporate limits assessed, by said Town of Seward for the year 1913, upon the following described property situated in the said Town of Seward, to wit:

All of Lots numbered, Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20) in Block Sixteen (16), all the land laying and being south of the north line of Railway Avenue and the south line of the United States Survey Number 726 South according to the United States patent to Frank L. Ballaine, and the plat of the Town of Seward, territory of Alaska, containing seven acres of land, one and forty one-hundredth acres which lies between the line of mean high tide on Resurrection Bay and the east line of the Alaska Central, now Alaska Northern Railway Company, and the front

of U. S. Survey Number 726 South and Number 726, North, of F. L. Ballaine's Soldier Additional Homestead Locations, twenty-eight one hundredths acres adjoining the above described tract on the North side thereof, the land occupied and claimed exclusively as right of way for Railroads by Railroad Companies, together with the buildings, sub-structures and super-structures supporting the same situated in the Town of Seward being two miles in length, the wharf known as the Seward Dock, including the super-structures and piles driven into the ground for the purpose of supporting the same. All of said property being situated within the corporate limits of the Town of Seward, Alaska.

5.

That all of the above-described property is situated within the corporate limits of the Town of Seward, Alaska, and subject to taxation by said Town of Seward. That said taxes were delinquent prior to the filing of the petition by said Town of Seward for an order for the sale of said property for the delinquent tax thereon; that all the proceedings and formalities have been had and performed which are required by law to entitle said Town of Seward to an order of this Court for the sale of said property as provided by law to satisfy the taxes assessed thereon. [18]

Conclusions of Law.

That from the facts found in this case the Court makes the following conclusions of law:

(1) That the levy of the taxes by the Town of Seward for the year 1913 was and is legal and valid.

(2) That the assessment and levy of taxes by the said Town of Seward for the year 1913 against the real estate, and all other property belonging to the Alaska Northern Railway Company, situated within the corporate limits of the Town of Seward, a legal and valid assessment and levy, and said property is subject to taxation by said town.

(3) That there is no law in the territory of Alaska which exempts the property of the Alaska Northern Railway Company or any part thereof from taxation by the said town of Seward.

(4) That the taxes for the year 1913 has not been paid on the property described in the foregoing *find* of facts for which petitioner prays for an order of this Court to sell; that said taxes were delinquent at the time the said Town of Seward filed its petition for an order of sale of said property. That said Town of Seward was entitled to said order at the time it filed its petition in this court for the sale of said property.

(5) That an order should be made by this Court for the sale of all the real estate described in the foregoing finding of facts as prayed for in the petition of the said Town of Seward or so much thereof as is necessary to be sold to satisfy the delinquent taxes assessed against it.

Done in open court this the 16th day of October,
A. D. 1914.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 16, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. S-1, page No. 327.

[19]

*In the District Court for the Territory of Alaska,
Third Division.*

Case No. S—38.

IN THE MATTER OF THE DELINQUENT
REAL ESTATE TAXES OF THE TOWN
OF SEWARD, ALASKA, FOR 1913.

Judgment.

This case coming on to be heard upon the petition the Town of Seward for an order of this Court to sell the real estate hereinbelow in this order described, for the reason that the taxes assessed against said real estate by the Town of Seward for the year 1913 is delinquent and unpaid. And the petitioner, the Town of Seward, Alaska, appearing by its attorneys, L. V. Ray and J. Lindley Green, and the Alaska Northern Railway Company, a corporation, appeared by its attorney, and protested against the Court making an order for the sale of the real estate belonging to the Alaska Northern Railway Company, situated in the corporate limits of the Town of Seward, Alaska, and the Court after hearing all the evidence and the argument of counsel for petitioner and protestant and examined the record in said case, is convinced that the order for the sale of the real estate hereinbelow described in this judgment should

be made, and the findings of fact and the conclusions of law having been heretofore made and entered by the Court in this case:

It is therefore ordered, adjudged and decreed by the Court, that the following described real estate which is situated within the corporate limits of the Town of Seward, Alaska, to wit:

All of lots numbered Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20), in Block Sixteen (16), all the land laying and being south of the north line of Railway Avenue and the south line of the United States Survey, Number 726 South, according to the United States patent to Frank L. Ballaine, and the plat of the Town of Seward, territory of Alaska, containing seven acres of land, one and forty one-hundredths acres which lies between the line of Mean high tide on Resurrection Bay and the east line of the Alaska Central, [20] now Alaska Northern Railway Company, and the front of U. S. Survey Number 726 South and Number 726 North of F. L. Ballaine's Soldier Additional Homestead Locations, twenty-eight one-hundredths acres adjoining the above-described tract on the north side thereof, the land occupied and claimed exclusively as right of way for railroads by railroad companies, together with the buildings, sub-structures and super-structures supporting the same situated in the Town of Seward, being two miles in length, the wharf known as the Seward Dock, including the super-structures and piles driven into the ground for the purpose of supporting the same. All of said property being situated

within the corporate limits of the Town of Seward, Alaska. Shall be sold at public auction by the clerk of said Town of Seward at a time and place within the corporate limits of said Town of Seward to be fixed by the common council of said town after giving notice of said sale by publishing a notice thereof, or posting notices thereof as required by law; to satisfy the delinquent taxes assessed against said real estate by the said Town of Seward, for the year 1913, and to satisfy all penalties and all costs incurred in the proceedings; that a corrected delinquent tax-roll corresponding to the real estate included in this order made up as prescribed by law, shall be attached to a copy of this order, which order shall be certified to by the clerk of this court.

Done in open court this the 16th day of October, A. D. 1914.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 16, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. Entered Court Journal No. S—1, page 337. [21]

Delinquent Tax-roll.**Alaska Northern Railway Company**

Block 16—Lot 16—Valuation..\$	450.00
Valuation Improvement	000.00

Total Valuation.... \$ 450.00

Amount of Taxes.....	2.70
Penalty.....	.14
Interest.....	.33
Advertisement.....	.50

Total..... 3.67

Alaska Northern Railway Company

Block 16—Lot 17—Valuation..	450.00
Valuation Improvements..	9750.00

10200.00

Amount of Taxes.....	61.20
Penalty.....	3.06
Interest.....	7.55
Advertisement... ..	.50
Total.....	71.81

Alaska Northern Railway Company

Block 16—Lot 18—Valuation..	450.00
Valuation Improvement	9750.00

10200.00

vs. Municipality of Seward, Alaska. 29

Amount of Tax.....	61.20
Penalty.....	3.06
Interest.....	7.55
Advertisement.....	.50

Total..... 71.81

Alaska Northern Railway Company

Valuation

Block 16—Lot 19—Valuation.... 450.00

Valuation Improvement 9750.00

10200.00

Amount of Tax.....	61.20
Interest.....	7.55
Penalty.....	3.06
Advertisement.....	.50

Total..... 71.81

Alaska Northern Railway Company

Block 16—Lot 20—Valuation... 750.00

Valuation Improvement 97.50

Amount of Tax.....	63.00
Penalty.....	3.15
Interest.....	7.77

Total..... 73.92

[22]

Alaska Northern Railway Company—All of the land lying and being south of the north line of Railway Avenue and the south line of U. S. Survey No. 726 South, according to U. S. Patent to Frank L. Ballaine and the map and plat

of the Town of Seward, Territory of Alaska.

Area seven acres.

Valuation.....	24,500.00
Amount of Tax.....	147.00
Penalty.....	7.35
Interest.....	18.13
Advertisement... ..	5.00

Total.....177.48

Alaska Northern Railway Company—One and forty-one-hundredths acres which lies between the line of mean high tide on Resurrection Bay and the east line of the right of way of the Alaska Central Railway and in front of the U. S. Survey No. 726 S, and 726 N., F. L. Ballaine soldier's additional homestead location, 1 40/100 acres.

Valuation.....	\$4,800.00
Amount of Tax.....	28.00
Penalty.....	1.44
Interest.....	3.55
Advertisement.....	5.00
Total.....	37.99

Alaska Northern Railway Company—Twenty-eight one-hundredths acres described as next above.

Valuation.....	560.00
Amount of Tax.....	3.36
Penalty.....	.17
Interest.....	.41
Advertisement... ..	2.00
Total.....	5.94

Alaska Northern Railway Company—The land occupied and claimed exclusively as right of way for railroads by railroad companies and corporations, together with the buildings and all the sub-structures and super-structures supporting the same, situate within the Town of Seward, Alaska, two miles.

Valuation.	30,000.00
Amount of Tax.	180.00
Penalty.	9.00
Interest.	22.20
Advertisement.	5.00
	<hr/>
	216.20

[23]

Alaska Northern Railway Company—The wharf known as the Seward Dock within the Town of Seward, including the super-structure and piles driven into the ground for the purpose of supporting the same.

Valuation.	10,000.00
Amount of Tax.	60.00
Penalty.	3.00
Interest.	7.38
	<hr/>
Advertisement.	3.50
	<hr/>
	73.88

Costs of suit to date. 9.75

Territory of Alaska

Third Division,—ss.

I, Carl Almy, clerk of the Town of Seward, Alaska, hereby certify that the foregoing is a true copy of the corrected delinquent tax-roll of said town for the year 1913, which has been corrected by me to correspond in all respects with the delinquent tax-roll as passed upon and allowed by the Court, to which has been added the costs of this suit, a copy of which said order of the Court is attached to this tax-roll.

IN WITNESS WHEREOF I have hereunto set my hand and the official seal of the Town of Seward, Alaska, this 21st day of November, A. D. 1914.

[Seal]

CARL ALMY,
Clerk.

[Endorsement]: Filed in the District Court, Territory of Alaska, Third Division. Nov. 27, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[24]

*In the District Court for the Territory of Alaska,
Third Division.*

S—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

vs.

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

**Order Extending Time to [November 4, 1914, to]
File Bill of Exceptions.**

The Court having rendered its decision, this day, the protestant, Alaska Northern Railway Company, by its attorney, S. O. Morford, gives notice of appeal from the order therein rendered in favor of the Municipality of Seward and against protestant, Alaska Northern Railway Company.

IT IS ORDERED that said protestant, Alaska Northern Railway Company, have thirty days in which to prepare and files its bill of exceptions.

Oct. 5, 1914.

FRED M. BROWN,
Judge.

Entered Court Journal No. S-1, page 285.

Filed in the District Court, Territory of Alaska, Third Division. Oct. 5, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [25]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

**Order [Extending Time to November 16, 1914, to
File Bill of Exceptions].**

On application of the Alaska Northern Railway Company, by its attorney, S. O. Morford, for an extension of time in which to serve and file its bill of exceptions in the above-entitled matter, and it appearing that the Municipality of Seward by its attorney, J. Lindley Green, has consented to an extension of time, and good cause appearing to the Court therefor, and it further appearing that the Court heretofore had entered an order giving the protestant, the Alaska Northern Railway Company, thirty days from the 7th day of October, 1914, in which to serve and file its bill of exceptions and that said time has not yet expired, it is ordered that the defendant Alaska Northern Railway Company have to and including the 16th day of November, 1914, in which to prepare, serve and file its bill of exceptions herein.

Dated 29 day of October, 1914.

FRED M. BROWN,
Judge.

[Endorsements]: Entered in Court Journal No. 8, page No. 363.

Filed in the District Court, Territory of Alaska, Third Division. Oct. 29, 1914. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [26]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

Opinion [in Bill of Exceptions].

This cause coming on regularly to be heard the — day of October, 1914, upon application of the Municipality of Seward for an order of sale for delinquent taxes for the year 1913, against the Alaska Northern Railway Company, a corporation, and the written protest of the Alaska Northern Railway Company, and a statement of facts signed and filed by the respective parties requesting the opinion of the Court on a question of law as to the right of the Municipality of Seward to levy a tax upon railways or railway property, the cause was submitted to the court on the record without further evidence, the Municipality of Seward being represented by L. V. Ray, Esq., and J. Lindley Green, Esq., and the Alaska Northern Railway Company being represented by S. O. Morford, Esq., the Court, after hearing the arguments of respective counsels and being fully advised in the premises, rendered its written decision in the case in words and figures as follows:

*In the District Court for the Territory of Alaska,
Third Division.*

S/38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

vs.

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

Opinion.

This is an application for adjustment and order of sale of real property for delinquent taxes, made by the Town of Seward, pursuant to the provisions of Chapter 69 of the Teritorial Laws of Alaska for the year 1913. [27]

The Alaska Northern Railway Company, a corporation, has filed written objections to the making of an order by this Court approving the tax levy for the years 1912 and 1913, upon property owned by it within the corporate limits of the Municipality of Seward, assigning the following grounds of objections:

1. That the Municipality of Seward had no power or authority to levy any tax or taxes upon railroad property of the Alaska Northern Railway Company.
2. That the property attempted to be assessed is not sufficiently described to identify the same.

3. That the Act of the Territorial Legislature, entitled an Act relating to the assessment, levy and collection of general taxes for school and municipal purposes by municipal corporations, and declaring an emergency, is void.
4. That this Court has no jurisdiction to hear and determine the matter.
5. That the Alaska Northern Railway Company is exempt from municipal taxes for a period of five years by virtue of the Act of Congress approved August 24, 1912, entitled An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon, and for other Purposes.
6. That the Alaska Northern Railway Company is further exempt from taxation by virtue of the Special Act of Congress, entitled "An Act to extend the time for the completion of the Alaska Central Railway, and for other purposes, approved June 30, 1906.

The only grounds urged by counsel for said Railway Company are the fifth and sixth, to wit:

a. That said Alaska Northern Railway Company is exempt from municipal taxes for the period of five years by virtue of the Act of Congress, approved August 24, 1912, which was the Act creating a legislative assembly for the territory of Alaska. This Act, known as the Organic Act, contains the following provision, in Section 416, Compiled Laws of Alaska:

"Provided that Congress reserves the exclusive power for five years from the date of the

approval of this Act to fix and impose any tax or taxes upon railways or railway property in Alaska.”

The evident purpose and intent of this provision was to restrict or prohibit the territorial legislature of Alaska created by said Act from imposing any tax upon railways in Alaska for five years from August 24, 1912. [28]

By the Act of Congress approved April 28, 1904, providing for the incorporation of towns in Alaska, the following powers were given to the common council of the towns or municipalities, section 9 (Sec. 627, Comp. Laws of Alaska);

“The said common council shall have and exercise the following powers;

To assess, levy and collect a general tax for school and municipal purposes, not to exceed two per centum of the assessed valuation upon all real and personal property and to declare the same a lien upon said property and to enforce the collection of such lien by foreclosure, levy, distress and sale. 2

This Act has never been repealed. Chapter 69 of the territorial laws of Alaska does not undertake to authorize or empower the levy or collection of any further or additional tax than that theretofore authorized by Congress, but merely provides for the manner of the enforcement and collection of the same.

Section 2569, Comp. Laws of Alaska, as amended June 6, 1900, provides for the payment of a license fee for carrying on certain lines of business and

trade and among other things, provides for the payment by railroads of \$100 per annum on each mile operated. There is no more reason for believing that the Act relating to taxation by municipalities, approved August 28, 1904, is repealed by implication by the said Organic Act, approved August 24, 1912, than that the General Act amended June 6, 1900, regarding the payment of \$100 per mile of railroad operated, as a license fee, should be so repealed by implication. By said Organic Act the Congress merely provides that it retains exclusive power for five years from August 24, 1912, to impose taxes upon railway property in Alaska. The tax here complained of is imposed or authorized by Congress, and it would be contrary to every rule of statutory construction to read into this Organic Act something that is not contained therein, to wit, that Congress suspends the power of taxation theretofore granted to the municipality or suspends the license fee theretofore imposed by Congress.

It seems to me clear that the purpose and intent of said provision of the Organic Act was merely to prohibit the territorial [29] legislature from imposing a further or additional tax on railroads during said period of five years.

In the *City of Rochester v. Rochester Ry. Co.*, 82 N. Y. 99, 70 L. R. A. 779, it is said, quoting *Yazoo & M. Valley R. Co. v. Adams*, 180 U. S. 1:

“Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appears to have been the intent of the

legislature. Public policy in all the states has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational and municipal purposes; but this list ought not to be extended, except for very substantial reasons; and while, as we held in many cases, legislatures may, in the interest of the public, contract for the exemption of other property, such contract should receive a strict interpretation, and every reasonable doubt be resolved in favor of the taxing power. Indeed, it is not too much to say that courts are astute to seize upon evidence tending to show either that such exemptions were not originally intended, or that they have become inoperative by changes in the original constitution of the companies." "See *New Orleans City & Lake R. Co. v. New Orleans*, 143 U. S. 192, 36 L. ed. 121, 12 Sup. Ct. Rep. 406, and *Memphis Gaslight Co. v. Taxing District*, 109 U. S. 398, 27 L. ed. 976, 3 Sup. Ct. Rep. 205."

(b) The said Alaska Northern Railway Company by its sixth ground of objection claims to be exempt from said taxation by virtue of a special Act of Congress entitled "An Act to extend the time for the completion of the Alaska Central Railway and for other purposes," approved June 30, 1906. This Act provides—

"Section 5. Said Company shall be exempt from license tax and tax on its railway and railway property during the period of construction and for five years thereafter; provided, that the

total period of exemption shall not exceed ten years from the time of the passage of this Act.”

This special Act of Congress, however, was an act of privilege or exemption, personal to the Alaska Central Railway Company, not to its successors or assigns, which under the settled law, as determined by the Supreme Court of the United States would not pass to this protestant, the Alaska Northern Railway Company.

In *Norfolk & W. R. Co. v. Pendleton*, 156 U. S. 667, it is said:

“We have frequently held that, in the absence of express statutory direction, or of an equivalent implication by necessary construction, provisions, in restriction of the right of the state to tax the property or to regulate the affairs of its corporations, do not pass to new corporations succeeding by consolidation or by purchase under foreclosure, to the property and ordinary franchises [30] of the first grantee; that a mortgage of the franchises and property of a corporation, made in the exercise of a power given by the statute, confers no right upon purchasers at a foreclosure sale to exist as the same corporation, but to recognize a new corporation, subject to the laws existing at the time of the reorganization. This we have stated to be a salutary rule of interpretation, founded upon obvious public policy, which regards such exemptions as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and

express requirements of the grant construed *strictissimi juris*.

Morgan v. Louisiana, 93 U. S. 217.

Wilson v. Gaines, 103 U. S. 417.

Chesapeake & O. R. Co. v. Miller, 114 U. S. 176.

I am therefore of the opinion that the Alaska Northern Railway Company is lawfully subject to this tax and the objections of said Railway Company will be overruled and the order of sale made as prayed for.

Dated at Seward, Alaska, this 5th day of October, 1914.

FRED M. BROWN,
District Judge.

The protestant thereupon gave notice in open court of its exception to the ruling of the Court in favor of the Municipality of Seward and against the Alaska Northern Railway Company, and it was ordered by the Court that protestant, Alaska Northern Railway Company have thirty days in which to file its bill of exceptions, and thereafter, to wit, on the 29th day of October, 1914, on application of protestant for further time to prepare and file its bill of exceptions, the time was extended by order of the Court to and including the 16th day of November, 1914.

Exceptions.

The protestant Alaska Northern Railway Company makes the following exceptions to the rulings of the Court:

1. To the ruling of the Court that municipal corporations are authorized to levy taxes on railways or railway property in Alaska.
2. To the ruling of the Court denying that the Alaska Northern Railway Company is exempt from taxes for a period of five years from August 24, 1912, save and except taxes imposed by the Congress of the United States [31]
3. To the ruling of the Court holding that the Ninth paragraph of Section 627, Compiled Laws of Alaska, has not been repealed or superseded by the subsequent act of Congress approved August 24, 1912, entitled An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon, and for Other Purposes.
4. To the ruling of the Court that the Alaska Northern Railway Company is subject to taxation by the Municipality of Seward.
5. To the ruling of the Court that the Act of Congress approved August 24, 1912, entitled An Act to Create a Legislative Assembly in the Territory of Alaska, to Confer Legislative Power Thereon, and for Other Purposes, exempts railways and railway property from territorial taxes only and not from municipal taxes.
6. To the ruling of the Court that the Alaska Northern Railway Company, as successor of the Alaska Central Railway Company, is not exempt from taxation by virtue of the exemption extended to the Alaska Central Railway

Company by the Act of Congress approved June 30, 1906, 34 Stat. L. 798, Compiled Laws of Alaska, sec. 76; Paragraph Fifth, and the Act of March 2, 1909, 35 Stats. L. 683, Compiled Laws of Alaska, sec. 77.

7. To the ruling of the Court making an order of sale of protestant Alaska Northern Railway Company's property or any part thereof for delinquent taxes levied by the Municipality of Seward.

[Order Settling and Allowing Bill of Exceptions.]

And now, in furtherance of justice, and that right may be done the defendant, said defendant tenders and presents the foregoing as its bill of exceptions in this case to the action of the Court, and prays that the same may be settled and allowed and signed and sealed by the Court and made a part of the record, and the same is accordingly done this 14th day of November, 1914.

FRED M. BROWN,
Judge.

[Endorsements]: Entered Court Journal No. 8, page No. 407.

Filed in the District Court, Territory of Alaska, Third Division. Nov. 14, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [32]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

Petition for Writ of Error.

And now comes the Alaska Northern Railway Company, a corporation, defendant herein, and says that on or about the 16th day of October, A. D. 1914, this Court entered judgment herein in favor of the plaintiff and against the defendant in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and for an order fixing the amount of security for the costs of said writ of error to be given by said defendant

thereon, and also fixing the amount of a separate bond to be given by it thereon in order to supersede the effect and enforcement of said judgment appealed from pending the hearing and determination of said writ of error.

S. O. MORFORD,

Attorney for Defendant and Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [33]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

**Order Allowing Writ of Error and Fixing Amount of
Bond for Costs and Amount of Bond for Super-
seedeas on Writ of Error.**

The Alaska Northern Railway Company, a corporation, the defendant, by its attorney, having this day filed in the above-named court its petition for allowance of a writ of error on its part from the judgment rendered and entered therein by said court on the 16th day of October, 1914, with its assignment

of errors upon which it will rely on said writ of error appended to said petition, and having presented its said petition and assignment of errors to the undersigned District Judge, presiding in said court, and moved thereon for an order allowing said writ of error and fixing the amount of security for the costs of said writ of error to be given by it thereon, and also fixing the amount of security for the costs and damages of said writ of error to be given by it thereon in order to operate as a supersedeas of said judgment pending the hearing and determination, and the undersigned having considered said petition and being fully advised on the premises, it is ordered as follows:

First, that the writ of error of said defendant prayed for in and by its petition be and the same is hereby allowed.

Secondly, that the amount of the bond to be given by said defendant, plaintiff in error, for the costs of said writ of error (but not to operate as a supersedeas), be and it hereby is fixed in the sum of \$1,700.00, and that upon the filing of a bond for costs on said writ of error in said sum as prescribed by the statute in such case made and provided and approved by the undersigned, said writ of error shall become effective.

Thirdly, that the amount of a further bond thereafter to be given by said defendant, plaintiff in error, for the costs and damages [34] of said writ of error, in order to operate as a supersedeas of said judgment pending the hearing and determination of said writ of error, be, and it hereby is, fixed at the

sum of \$250.00, and that upon the filing of such supersedeas bond in said sum, conditioned as prescribed by the statute in such case made and provided and approved by the undersigned, within the time prescribed by law for a supersedeas on writ of error, further proceedings upon said judgment shall be stayed until the determination of said writ of error and the filing of a mandate thereon in this court.

Done in open court this 18th day of February,
A. D. 1914.

FRED M. BROWN,
District Judge.

[Endorsed]: Entered Court Jurnal No. 8, page
No. 490.

Filed in the District Court, Territory of Alaska,
Third Division. Feb. 29, 1915. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy. [35]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S. 38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation,

Assignment of Errors.

Comes now Alaska Northern Railway Company,

a corporation, defendant in the above-entitled action, and plaintiff in error herein, and makes and files the following assignment of errors on which it will rely in the prosecution of its Writ of Error in the above-entitled cause:

I.

The District Court erred in holding that Municipality of Seward has power to levy taxes upon railways and railway property in Alaska.

II.

The District Court erred in holding that the Municipality of Seward is authorized by law to levy taxes on the property of the Alaska Northern Railway Company.

III.

The District Court erred in holding the exemptions in the Act of Congress approved August 24, 1912, 37 Stat. L. 512, sec. 416, Compiled Laws of Alaska, that "No tax shall be levied for Territorial purposes in excess of one per centum upon the assessed valuation of property therein in any one year; nor shall any incorporated town or municipality levy any tax, for any purpose, in excess of two per centum of the assessed valuation of property within the town in any one year: *Provided*, That the Congress reserves the exclusive power for five years from the date of the approval of this act to fix and impose any tax or taxes upon railways or railway property in Alaska," apply to the Territorial Legislature only, and not to municipalities.

IV.

The District Court erred in holding that the Act

of Congress entitled An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes (sec. 416, Compiled Laws of Alaska), did not repeal or suspend for five [36] years that portion of the Act of April 28, 1904, authorizing municipalities to levy a tax not to exceed two per centum upon all real and personal property within the corporate limits and enforce the collection of the same.

V.

The District Court erred in holding that the tax imposed by the municipality of Seward for the year 1913 upon property of the Alaska Northern Railway Company is imposed by Act of Congress.

VI.

The District Court erred in holding that the exemption from taxation granted to the Alaska Central Railway Company was a personal exemption granted to the Alaska Central Railway Company, and did not inure to its property in the hands of its successors and assigns.

VII.

The District Court erred in holding that the Alaska Northern Railway Company is lawfully subject to this tax by the Municipality of Seward.

VIII.

That the District Court erred in its first finding of fact, in finding that the Town of Seward has full power and authority to levy and collect taxes upon the property within its corporate limits, and not finding that the property of the Alaska Northern Railway Company within corporate limits is exempt from

taxation by said Town of Seward.

IX.

That the District Court erred in its second finding of fact, in finding that the property of the Alaska Northern Railway Company situate within the corporate limits of the Town of Seward is subject to taxation by said municipality.

X.

That the District Court erred in its third finding of fact, in finding that the assessment was legally made and all the proceedings regular and according to law. [37]

XI.

That the District Court erred in its fifth finding of fact, in finding that the property of the Alaska Northern Railway Company is subject to taxation by the Town of Seward, and in further finding that the Town of Seward is entitled to an order of sale of said property to satisfy taxes assessed thereon.

XII.

That the District Court erred in making its first conclusion of law, that the levy of taxes by the Town of Seward for the year 1913 was and is legal and valid.

XIII.

That the District Court erred in making its second conclusion of law, that the assessment and levy of taxes by the Town of Seward against the property of the Alaska Northern Railway Company is a legal and valid assessment and levy.

XIV.

That the District Court erred in making its third

conclusion of law, that there is no law in the Territory of Alaska which exempts the property of the Alaska Northern Railway Company or any part thereof from taxation by the said Town of Seward.

XV.

That the District Court erred in making its fourth conclusion of law, that said Town of Seward was entitled to said order of sale at the time it filed its petition in this court for the sale of said property.

XVI.

That the District Court erred in making its fifth conclusion of law, that an order of sale should be made of the property described in the findings of fact to satisfy the delinquent taxes assessed against it.

XVII.

That the District Court erred in entering judgment and order of sale of the property of the Alaska Northern Railway Company. [38]

Wherefore, said defendant and plaintiff in error prays that said judgment of said District Court for the Territory of Alaska, Third Division, may be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, with directions for such further proceedings as may be proper.

S. O. MORFORD,

Attorney for Alaska Northern Railway Company,
Defendant and Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [39]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S.—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES.

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Bond for Costs on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, the Alaska Northern Railway Company, defendant in the above-entitled action (by S. O. Morford, its attorney and duly authorized agent in said action) as principal, and Chas. E. Brown and Sidney Anderson, as sureties, are held and firmly bound unto the Municipality of Seward, a municipal corporation, plaintiff in said action, in the penal sum of Two Hundred Fifty & 00/100 Dollars (\$250.00), lawful money of the United States of America, to be paid to said obligee; for which payment, well and truly to be made, we bind ourselves, successors, or assigns, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 16th day of February 1915.

The condition of this obligation is such that, whereas, lately, at a session of the District Court for the Territory of Alaska, Third Division, holden at

Seward in said Division, in an action pending in said court between the above-named obligee, the Municipality of Seward, the plaintiff therein, and the above-named principal obligor, Alaska Northern Railway Company, a corporation, the defendant therein, a judgment and decree was made and entered by said court on the 16th day of October, 1914, in favor of said plaintiff and against said defendant, and said defendant is about to obtain a writ of error from said judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit:

Now, therefore, the condition of this obligation is such, that if said principal obligor, defendant and plaintiff in error as aforesaid, shall prosecute its said writ of error to effect, and answer all costs if it fails [40] to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ALASKA NORTHERN RAILWAY COM-
PANY, a Corporation,

By S. O. MORFORD, (Seal)

Its Attorney and Authorized Agent.

CHAS. E. BROWN. (Seal)

SIDNEY ANDERSON. (Seal)

In presence of

CURTIS R. MORFORD.

United States of America,
Territory of Alaska,—ss.

Chas. E. Brown and Sidney Anderson, being first duly sworn, each for himself and not one for the other deposes and says: That he is one of the persons named as sureties in, and who executed the

foregoing bond on writ of error; that he is a resident within the Territory of Alaska, and is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth double the amount specified in said bond as the penal sum thereof, in property within the said territory, over and above all just debts and liabilities, and exclusive of property exempt from execution.

CHAS. E. BROWN,
SIDNEY ANDERSON.

Subscribed and sworn to before me this 16 day of February, A. D. 1915.

[Seal] CURTIS R. MORFORD,
Notary Public in and for the Territory of Alaska,,
Residing at Seward.

My commission expires October 8, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By K. P. Geraghty, Deputy.
[41]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS; That we, the Alaska Northern Railway Company, a corporation, defendant in the above-entitled action (by S. O. Morford, its attorneys and duly authorized agent in said action), as principal, and Chas. E. Brown and Sidney Anderson, as sureties, are held and firmly bound unto the Municipality of Seward, a municipal corporation, plaintiff in said action, in the penal sum of seventeen hundred & 00/100 Dollars (\$1700), lawful money of the United States of America, to be paid to said obligee, for which payment, well and truly to be made, we bind ourselves, successors or assigns, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 16 day of February, 1915.

The condition of this obligation is such that, whereas, lately, at a session of the District Court for the District of Alaska, Third Division, holden at Seward in said Third Division, in an action pending in said court between the above-named obligee, the Municipality of Seward, the plaintiff therein, and the above-named principal obligor, Alaska Northern Railway Company, a corporation, the defendant therein, a judgment and decree was made and entered by said court on the 16th day of October, 1914, in favor of said plaintiff and against said defendant, and said defendant has obtained a writ of error from said judgment and decree to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, and has given a bond as required by law for the costs of said writ of error, and has served upon the adverse party [42] a citation duly issued in pursuance of said writ of error, and desire now to give a further bond to supersede said judgment and stay the execution thereof until the determination of said writ of error, as provided by law—the amount of which super-sedeas bond has been fixed, in and by the order made by said District Court in said action on the 16th day of February, 1915, allowing said writ of error, at \$1700.00.

Now, therefore, the condition of this obligation is such that if said principal obligor, defendant below, plaintiff in error herein, shall prosecute its writ of error to effect and answer all damages and costs, if it fails to make its plea good, then this obligation to be void; otherwise to be and remain in full force and virtue.

ALASKA NORTHERN RAILWAY COM-
PANY.

By S. O. MORFORD, (Seal)

Its Attorney and Authorized Agent.

CHAS. E. BROWN. (Seal)

SIDNEY ANDERSON. (Seal)

In presence of

CURTIS R. MORFORD.

United States of America,
Territory of Alaska,—ss.

Chas. E. Brown and Sidney Anderson, being first duly sworn, each for himself deposes and says: That he is one of the persons named as sureties in,

and who executed the foregoing bond on writ of error, that he is a resident within the Territory of Alaska, and is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth the sum of Seventeen Hundred and 00/100 Dollars (\$1700.00), the amount specified in said bond as the penal sum thereof, over and above all debts and liabilities, and exclusive of property exempt from execution.

CHAS. E. BROWN.

SIDNEY ANDERSON.

Subscribed and sworn to before me this 16 day of February, 1915.

[Seal]

CURTIS R. MORFORD,

Notary Public for the Territory of Alaska, Residing
at Seward Therein.

My Commission expires Oct. 8, 1915.

The foregoing supersedeas bond is hereby approved by me, as to form, sufficiency and sureties, this 18th day of February, 1915.

FRED M. BROWN,

District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [43]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

Writ of Error [Copy].

To the President of the United States of America,
the Honorable Judge of the District Court for
the Territory of Alaska, Third Division, Greet-
ing:

Because in the record and proceedings, also in the
rendition of the judgment, of a plea which is in the
said District Court, before you, between the Munici-
pality of Seward, plaintiff, and Alaska Northern
Railway Company, a corporation, defendant, a mani-
fest error hath happened, to the great damage of the
Alaska Northern Railway Company, a corporation,
defendant, as by its complaint appears, we being
willing that error, if any hath been, should be duly
corrected, and full and speedy justice done to the
party aforesaid in this behalf, do command you, if
judgment be therein given, that then under your seal,
distinctly and openly, you send the record and pro-
ceedings aforesaid, with all things concerning the
same, to the United States Circuit Court of Appeals
for the Ninth Circuit, together with this writ, so

that you have the same at San Francisco, in said circuit on the 17 day April next, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 18th day of February, A. D. 1915.

Attest my hand and the seal of the District Court for the Territory of Alaska, Third Division, in the clerk's office at Valdez, Alaska, on the day and year last above written.

[Seal]

ARTHUR LANG,
Clerk of the District Court for the Territory of
Alaska, Third Division. [44]

Writ of Error allowed this 18th day of February,
1915.

FRED M. BROWN,
District Judge.

[Endorsed]: Entered in Court Journal No. 8,
page No. 489.

Filed in the District Court, Territory of Alaska,
Third Division. Feb. 18, 1915. Arthur Lang,
Clerk. By T. P. Geraghty, Deputy. [45]

*In the District Court for the Territory of Alaska.
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY
OF SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation.

**Order Extending Time in Which to File Records in
the United States Circuit Court of Appeals,
Ninth Circuit, on Writ of Error.**

This matter coming on to be heard on motion of the defendant for an order extending the time in which to file the records in the above-entitled cause in the writ of error from the final judgment rendered in this court on the 16th day of October, 1914, to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the satisfaction of the Court that the time allowed in the writ of error is not sufficient time therefor;

It is therefore ordered, that the said Alaska Northern Railway Company, plaintiff in error herein, have to the 17th day of April, 1915, in which to have prepared the records in the above-entitled cause, on writ of error heretofore issued in said cause, and to file the same in the said United States Circuit Court of Appeals, for the Ninth Circuit.

Dated at Valdez, Alaska, this 18 day of February, 1915.

FRED M. BROWN,
District Judge.

[Endorsements]: Entered Court Journal No. 8, page No. 491.

Filed in the District Court for the Territory of Alaska, Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [46]

*In the United States District Court for the Territory
of Alaska, Third Division.*

No. S—38.

ALASKA NORTHERN RAILWAY COMPANY,
a Corporation,

Plaintiff in Error,

vs.

MUNICIPALITY OF SEWARD,

Defendant in Error.

**Citation to Circuit Court of Appeals on Writ of
Error [Copy].**

United States of America,

Territory of Alaska,—ss.

To the Municipality of Seward, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, in said Circuit, on the 17th day of April, 1915, pursuant to a writ of error filed in the clerk's office of the *District for*

the Territory of Alaska, Third Division, wherein Alaska Northern Railway Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 18th day of February, in the year of our Lord, one thousand nine hundred and fifteen, and of the Independence of the United States of America, the one hundred and thirty-ninth.

FRED M. BROWN,

District Judge Presiding in the District Court for the Territory of Alaska, Third Division.

[Seal]

Attest: ARTHUR LANG,

Clerk of the District Court for the Territory of Alaska, Third Division.

[Endorsed]: "Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy."

Entered Court Journal No. 8, page No. 491. [47]

*In the District Court for the Territory of Alaska,
Third Division.*

S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus,

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

**Acknowledgment of Service of Papers on Writ of
Error in the Above-entitled Cause.**

I, the undersigned, J. Lindley Green, attorney of
record for the plaintiff in the above-entitled cause,
hereby accept service in the matter of writ of error,
issued out of the above-entitled court, in said cause,
on the 18th day of February, 1911, by receiving copies
of the original files and records as follows, to wit:

Bill of Exceptions.

Order Allowing Bill of Exceptions.

Stipulation *in re* Transcript.

Petition for Writ of Error.

Order Allowing Writ of Error and Fixing Amount
of Bond.

Assignment of Errors.

Bond for Costs on Appeal.

Supersedeas Bond.

Writ of Error.

Order Extending Time to File Writ of Error in Cir-
cuit Court of Appeals.

Citation.

Acknowledgment of Service of Papers on Writ of Error.

Praecipe.

Dated this 18th day of February, 1915.

J. LINDLEY GREEN,

Attorney for Plaintiff and Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [48]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus,

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

**Stipulation [for Omission from Record of Part of
Delinquent Property List, etc.].**

It is hereby stipulated by and between the Municipality of Seward by its attorney, J. Lindley Green, Esq., and the Alaska Northern Railway Company, a corporation, by its attorney, S. O. Morford, Esq., that only so much of the delinquent property set forth in the petition for an order of sale as is described in the judgment and order of sale therein,

and no more, shall be included in the transcript of the record on writ of error, and the clerk of said court is hereby authorized to eliminate from said record on writ of error to the Circuit Court of Appeals all other property described in said delinquent tax-roll.

And it is hereby further stipulated that the copy of the municipal ordinance No. 14 be also eliminated by the clerk of said District Court from said record on writ of error to said Court of Appeals, and he is hereby authorized to eliminate the same.

J. LINDLEY GREEN,

Attorney for Municipality of Seward.

S. O. MORFORD,

Attorney for Alaska Northern Railway Company.

[Endorsed]: "Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy."

[49]

*In the District Court for the Territory of Alaska,
Third Division.*

No. S—38.

IN THE MATTER OF THE MUNICIPALITY OF
SEWARD FOR AN ORDER TO SELL
REAL PROPERTY FOR DELINQUENT
TAXES,

versus,

ALASKA NORTHERN RAILWAY COMPANY, a
Corporation.

Praeipice for Transcript of Record.

To the Clerk of the above-entitled Court:

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a copy of the record in the above-entitled cause, as a return to the Writ of Error, heretofore sued out of said Circuit Court of Appeals, to review the judgment of said cause, which record shall consist of the following files and records, to wit:

Petition for Adjustment and Order of Sale.

Protest of Alaska Northern Railway Company and
Affidavit Attached.

Stipulation of Facts.

Decision.

Findings of Fact and Conclusions of Law.

Judgment.

Order Granting Alaska Northern Railway Company
Thirty Days to File Bill of Exceptions.

Order Extending Time to Serve and File Bill of Ex-
ceptions.

Bill of Exceptions and Order Allowing Bill of Ex-
ceptions.

Petition for Writ of Error.

Order Allowing Writ of Error and Fixing Amount of
Bond.

Assignment of Errors.

Bond for Costs on Appeal.

Supersedeas Bond.

Writ of Error.

Order Extending Time to File Writ of Error in Circuit Court of Appeals.

Citation.

Acknowledgment of Service of Papers on Writ of Error.

Stipulation *in re* Transcript.

Praecipe.

S. O. MORFORD,

Attorney for Defendant and Plaintiff in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 18, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [50]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court for the Territory of Alaska,
Third Division.*

United States of America,

Territory of Alaska,

Third Division,—ss.

I, Arthur Lang, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 51 pages, numbered from 1 to 51, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office;

That this transcript is made in accordance with the plaintiff in error's praecipe on file herein.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and that the cost thereof, amounting to Twenty-three and 55/100 Dollars (\$23.55), was paid to me by S. O. Morford, Esq., attorney for the defendant and plaintiff in error herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this 25th day of February, A. D. 1915.

[Seal] ARTHUR LANG,
Clerk, District Court, Territory of Alaska, Third
Division.

By T. P. Geraghty,
Deputy. [51]

[Endorsed]: No. 2581. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Northern Railway Company, a Corporation, Plaintiff in Error, vs. Municipality of Seward, Alaska, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed March 6, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

